

Minutes from November 7th non-point workgroup meeting

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Minutes from non-point workgroup meeting of November 7, 2006

The meeting was held at the Piedmont Regional Office in Glen Allen, Virginia and commenced at 9:30 AM. The following persons were in attendance:

Brent Fults	Earth Source Solutions/Chesapeake Bay Nutrient Land Trust
Scott Reed	Earth Source Solutions/Chesapeake Bay Nutrient Land Trust
Shannon Varner	Troutman Sanders
Darrell Marshall	VDACS
Christy Williams	TetraTech
Katie Frazier	Virginia Agribusiness Council
Sharon Conner	Hanover-Caroline SWCD
Russ Baxter	DCR
Mindy Selman	World Resources Institute
Scott Macomber	Angler Environmental
Molly Pugh	Virginia Corn Growers Association
Jim Wallace	Colonial SWCD
Brian Noyes	Colonial SWCD
John Sheehan	Aqualaw
Allan Brockenbrough	DEQ
Russ Perkinson	DCR
Jack Frye	DCR
Bill Street	James River Association
Ed Overton	VASWCD
Bill Keeling	DCR
Suzan Bulbulkaya	Chesapeake Bay Commission
Mike Gerel	Chesapeake Bay Foundation
Greg Currey	TetraTech
Kyle Winter	DEQ

Kyle Winter opened the meeting by listing the meeting agenda items and opening the discussion on changes to the draft guidance since the last workgroup meeting.

The discussion of assumed efficiency rates was still outstanding, pending a determination as to what method would be used to calculate nutrient reductions.

Addressing the agricultural baseline BMPs, Mr. Winter requested input from the workgroup on citations for particular practices; it was agreed that the narrative description of baselines should refer to specific practices but that detailed information should be contained in an appendix to the guidance. DCR will provide this information. DCR was also asked to provide a definition for “permanent vegetative cover on critically eroding areas”.

The table for “beyond baseline” agricultural practices had a disclaimer that indicated that the list was not all-inclusive. Several members said that the term was confusing, as the table should be “all inclusive” to the extent of containing all of the practices sufficiently well-documented to be considered for offsets.

It was suggested that any publications produced for outreach should summarize these practices in plain language, but that the guidance should contain sufficient detail for use by regulatory staff or consultants.

DCR suggested that the table for “beyond baseline” might need more categories of information and agreed to provide suggestions to this effect. The other workgroup members were asked to provide information to help

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populate this table, whether with specific information on BMP criteria or by referring DEQ to appropriate reference materials.

The discussion turned to BMPs on developed land; Bill Keeling pointed out that Chesapeake Bay Model 4.3 has some BMP efficiencies for urban land but that Model 5.0 will most likely provide further refinement.

It was also emphasized that the developed land “beyond baseline” practices were intended as retrofits (i.e., new construction was subject to a number of regulations and statutes already, so these practices would reasonably be expected in new construction). Several workgroup members asked where these retrofits might be implemented, and how market forces would be expected to influence this. There was support for the view that if a developer installed BMPs during new construction, the developer should be able to receive credits because he has gone beyond the baseline and has installed BMPs that will reduce nutrient pollution beyond what he was required to do and that this is environmentally beneficial. Again, as new construction should be subject to a number of requirements for BMP implementation (perhaps not consistently enforced in all jurisdictions), it would be difficult for someone to go “beyond” baseline if they were doing what they should have been doing.

The developed land BMP baseline was described as “programmatic” as opposed to being technology based. This was considered a difficult concept to understand, and it was asked how someone would be able to fulfill this (part of the problem was knowing one’s compliance status regarding the different programs in question).

An example of this was that the jurisdiction must be determined by DCR to be consistent with the erosion and sediment control law; DCR is developing a web site to provide the current status of the Commonwealth’s localities and should have this on line within a year or two. It was asked whether aggregators would be responsible for performing baseline verification.

Like the agricultural BMPs, the baseline is described in the guidance in narrative form; however, the “beyond” baseline practices may not lend themselves to a table format because of the degree of site specificity involved with the proposals. It was suggested that some sort of review board be established to review and approve more innovative practices. It was also suggested that the developed land BMPs be subject to the same rigor of review, approval and verification as what currently exists for agricultural BMPs (many of which are already scrutinized under several state and federal programs).

The workgroup held a lengthy discussion on the programmatic baseline; what if a locality was not in compliance with the Chesapeake Bay Preservation Act requirements? Why would a developer, who might be exercising due diligence in implementing appropriate controls, be prevented from generating offsets? It was suggested that such a developer might sue the locality over this; it was also noted that compliance with the appropriate requirements would convey a competitive advantage regarding offset generation. DCR explained that the tributary strategy called for ambitious urban non-point reductions; as the programmatic baseline is needed to meet these reductions, it has to be retained.

This requirement was compared to agricultural practices; it was asked whether a farmer renting land from a landowner (who rented land to other farmers who did not want to generate offsets on their parcels) would have similar difficulties. It was pointed out that the enabling legislation permitted offset acquisition by dischargers from public or private parties acting on behalf of the *landowners*, and that the landowner’s contiguous operation was the object of concern. It will be important for producers and landowners to understand the regulation and the benefits/obligations related to offset generation and trading; this should be an important component of any outreach undertaken to promote this program. Incidentally, it was posed that the farmer could be the private entity acting on behalf of the landowner.

One question arose regarding a locality that was in compliance at the time offset approval was granted, and then fell out of compliance. It was agreed that the approved offsets would still be valid.

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One question pertained to the connection between the programmatic baseline and the MS4 compliance status of a locality; another question pertained to the long-term verification of offsets generated by a developer who implemented BMPs at private residences before completing the build out of the subdivision and moving on to another project.

The discussion turned to land conversion; the requirement that converted land must be protected by a permanent easement or fee simple purchase was changed to require that the converted land must be protected by an easement for the duration of the offset contract.

Mr. Winter introduced a new section of the guidance; requirements pertaining to authentication of load reductions achieved by BMPs. Much of the discussion that followed addressed the extent to which landowners, aggregators or dischargers would authenticate the reductions themselves (the annual requirement to submit a report to DEQ by February 1 needs to be discussed in the guidance), and what information would suffice to demonstrate the BMPs were implemented (photos, affidavits, inspection reports etc.). Several questions arose from this:

- Who performs the inspections? (could be a DEQ inspector, SWCD employee, consultant under hire by DEQ or permittee; in any event, person needs to have broad experience in agricultural practices because of the breadth and complexity of the BMPs encountered. Idaho calls for NRCS personnel to be actively involved in determining compliance with their equivalent to VA's baseline).
- What qualifications would the inspector hold? (P.E., NMP, E&S inspector, CDC – could vary by BMP, might require multiple inspectors).
- How often would the inspections occur? (given the visibility of the program, DEQ would inspect the discharger up to once a year at first, less often (every other year) as the program was better established).
- What is the purpose of the inspection (what are we looking for)? (actually, two processes will be at work here, probably conducted by different people using different criteria; one review will be to determine compliance with the baseline and that the proposal (as implemented) was consistent with commonly accepted design criteria; the second review would be to determine the operation and maintenance of the practice).
- Who reviews BMPs that require conservation plans?

It was agreed that DEQ and DCR would need to discuss these questions in more depth, particularly as these might affect the workload of these agencies' employees. It was noted that as several SWCDs already have cooperative arrangements (often involving payment for services) with the type of localities that might need to acquire offsets, it might be feasible for the SWCD to integrate these inspections into the service agreement.

Mr. Winter then introduced another new section of the guidance, addressing review and verification of practices not listed in the guidance; it was suggested that this be limited to a statement that DEQ would evaluate these on a case-by-case basis, since it would be impossible to predict and categorize what innovative practices might be proposed, and that landowners should be encouraged to attempt to generate offsets using proven technology.

Some comments from the previous meeting were discussed:

- While the last meeting included some discussion of how actual credits might be generated and determined, the guidance should contain specific examples of exactly how the system would operate in the real world. A few examples of the most likely trading scenarios that illustrate the amount of credits

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(pounds of nitrogen and phosphorous) that could be produced for various types of land uses and the actual price of those credits (and how that would be set) would be very helpful. An explanation of how the cost would be determined and how many credits would be available for the average size farm should be included.

- The material from the Idaho Department of Environmental Quality and its step-by-step process was helpful; something similar should be used here so that all the possible participants (farmers, industrial and municipal operators) will have a clear guide as to how the process is supposed to work and how credits are to be determined.
- Without more input and buy-in from individuals or groups who could provide the offsets skepticism may be high and participation low. Setting up a system for verification and a reasonable inspection frequency would seem to especially need their input. (valid comment, addressed in outreach discussion)
- The beyond baseline measures require early planting of cover crops after legumes. To meet this deadline cereal crops would have to be aerial seeded. We only have a few agricultural pilots in the state which may be a real problem. Where does this leave farmers who grow wheat for grain? They could follow SL8-B one year but the next winter would be cash grain production.
- Will there be a length of time the practice is in place associated with the beyond baselines for nutrient management? (depends on BMP life expectancy)

The discussion turned to outreach efforts. Members of the workgroup will identify groups of agricultural producers (producers who rent land and producers who own their land) who have some experience with BMP implementation and cost share/grant requirement compliance (CSP participants would be good, and some Clean Water farm award winners would also be good). Local NRCS/extension/SWCD agents would also be good attendees. Sessions would be held in eastern Virginia, Southside and the Valley in early December.

The producers would be given, in advance of the meeting, briefing materials on the regulation and the intent (not the substance) of the guidance, so that they would have a common level of knowledge going into the focus group sessions. The sessions would consist of the following items, with an agricultural agent as the moderator and DEQ/DCR staff as observers. The purpose of the focus group session is to solicit open-ended input as to how the guidance should be developed, as opposed to presenting the program as a “done deal” and asking for opinions. The results of these meetings will be presented to the workgroup shortly after they are held, and they should be considered in light of any outreach to larger groups of prospective offset producers. The meeting agenda is tentatively organized along the following subjects:

- Introduction to the program
- Potential input costs and revenues
- Potential demand for offsets (both from dischargers and from WQIF)
- Previous experience of focus group with cost share/grant programs – what worked and what didn’t
- Discussion of process:
 - ❑ Evaluation of current BMP implementation status and eligibility for offset development
 - ❑ Demonstration of baseline
 - ❑ Inspection of BMPs by regulatory agency or someone acting on their behalf – what would be a concern? How could this be resolved?
 - ❑ Relationship with VPDES permittee – what aspects of liability are a concern? How could these be resolved?
 - ❑ Working through 3rd party – what are perceived benefits/drawbacks? What would make it more/less attractive?

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- ☐ Working with landlord – what are perceived benefits/drawbacks? What would make it more/less attractive?
- ☐ Duration of contracts

Mr. Winter agreed to develop the agenda in more detail, to prepare background briefing materials and to schedule DEQ/DCR participation. He will also investigate the prospects for the Southside focus group.

Sharon Conner agreed to contact candidates for the Eastern VA focus group and to obtain a meeting space.

Mike Gerel agreed to help with the Valley focus group.

Mr. Winter requested any additional public comment; hearing none, the meeting was adjourned at 3 PM.